

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
PANAMSAT LICENSEE CORP.)
)
Application for Authorization to Construct,) File Nos. 198/199-SAT-P/LA-95
Launch, and Operate a Ka-Band Communications) New IBSF No. SAT-LOA-19950929-
Satellite System in the Fixed-Satellite Service at) 00155/54; 202-SAT-AMEND-95
Orbital Locations 58° W.L. and 125° W.L.) New IBSF No. SAT-AMD-19950929-00109
)
Applications for Modification of License and for) File No. SAT-MOD-19980521-00070
Extension of Milestone Schedule)

MEMORANDUM OPINION AND ORDER

Adopted: June 26, 2000

Released: June 26, 2000

By the Chief, International Bureau:

I. INTRODUCTION

1. In this Order, we cancel PanAmSat Licensee Corp.'s ("PanAmSat") authorization to construct, launch, and operate a Ka-band satellite system in the fixed-satellite service. PanAmSat has failed to satisfy the initial, mandatory implementation milestone explicitly set forth in its authorization requiring it to begin construction of its satellite system by May 1998. Consequently, we render PanAmSat's authorization null and void, and the orbit locations that had been assigned to PanAmSat are available for reassignment to a qualified applicant in the second Ka-band "processing round." As a result, we also dismiss PanAmSat's Applications for Modification of License and for Extension of Milestone Schedule.

II. BACKGROUND

2. On May 9, 1997, the Chief, International Bureau, pursuant to delegated authority, authorized PanAmSat to construct, launch, and operate two geostationary-orbit satellites to provide fixed-satellite service in the United States in the 19.7-20.2, 28.35-28.6, and 29.25-30.0 GHz frequency band ("Ka-band").1 This authorization was granted as part of the first "processing round" of Ka-band systems. In the first round, the Bureau authorized a total of 14 Ka-band systems, including PanAmSat's Ka-band system.2 PanAmSat proposed to use its satellite system to offer a broad range of video programming as

1 PanAmSat Licensee Corp., 13 FCC Rcd 1405 (Int'l Bur. 1997).

2 Assignment of Orbital Locations to Space Stations in the Ka-band, Order, 13 FCC Rcd 13737 (1996).

well as a range of data and voice services.³

3. PanAmSat’s license, like all instruments of authorization granted to Ka-band satellite system licensees in the fixed-satellite service, was a conditional license. It contained explicit deadlines or “milestones” for system implementation that PanAmSat was required to satisfy. PanAmSat’s authorization expressly articulated that the Commission intends “to rigorously enforce the system milestone schedule ... to ensure that PanAmSat proceeds in a timely manner and does not tie up valuable orbital locations and spectrum to the exclusion of other qualified applicants.”⁴

4. PanAmSat’s authorization specified the following mandatory system implementation milestones upon which PanAmSat’s license was conditioned:

... unless extended by the Commission for good cause shown, this authorization shall become NULL AND VOID in the event the space station is not constructed, launched, and successfully placed into operation in accordance with the technical parameters and terms and conditions of the authorizations by the following dates:⁵

	<u>Construction Commenced</u>	<u>Construction Completed</u>	<u>Launch</u>
PAS 10	May 1998	April 2002	May 2002
PAS 11	May 1999	April 2002	May 2002

5. On May 21, 1998, more than a year after the captioned authorization was granted, PanAmSat filed an application to modify its authorization to permit the use of inter-satellite links (“ISLs”).⁶ PanAmSat requested the ISLs in order to integrate its two satellites with seven other authorized Ka-band satellites acquired from Hughes Communications Galaxy, Inc.⁷ PanAmSat noted that the Hughes satellite authorizations did not contain milestone schedules because they contemplated the use of ISLs for which the Commission had not yet assigned spectrum. PanAmSat acknowledged that although it had not requested ISLs when it originally filed its Ka-band application, the acquisition of the Hughes authorizations made it necessary for PanAmSat to modify its system. Consequently, PanAmSat also asked the Commission to suspend the milestone schedule in its authorization pending the assignment of ISL spectrum and the grant of an amended authorization.⁸

³ *PanAmSat Licensee Corp.*, 13 FCC Rcd at 1406.

⁴ *PanAmSat Licensee Corp.*, 13 FCC Rcd at 1409.

⁵ *Id.* at 1414.

⁶ PanAmSat Licensee Corporation, File No. SAT-MOD-19980521-00070. PanAmSat’s license modification was the subject of a Petition to Deny, filed on August 26, 1999, by Pacific Century Group, Inc. Given our action herein, the Petition to Deny and related filings are dismissed as moot.

⁷ *Hughes Communications, Inc. and Affiliated Companies*, 12 FCC Rcd 7534 (1997).

⁸ PanAmSat Licensee Corp., Application for Extension of Time, File No. SAT-MOD-19980521-00070, filed May 21, 1998.

6. By letter, dated December 9, 1999, the Chief, Satellite and Radiocommunication Division, International Bureau, asked PanAmSat to substantiate its compliance with the first implementation milestone requiring the commencement of construction by May 1998. The letter reminded PanAmSat that:

The Commission requires the execution of a non-contingent construction contract to satisfy the construction commencement milestone of domestic satellite licenses. The non-contingent requirement contemplates that there will be neither significant delays between the execution of the construction contract and the actual commencement of construction, nor conditions precedent to construction.⁹

7. In its response, PanAmSat acknowledged the May 1998 construction commencement milestone in its authorization and the requirement to timely enter into a non-contingent construction contract in order to satisfy this milestone. Nevertheless, PanAmSat represented, among other things, that “[b]ecause of regulatory uncertainties regarding the [ISL] frequencies that can be used on PanAmSat’s Ka-band satellites ... PanAmSat has not been in a position to enter into ‘non-contingent contracts’ for the construction of either of the two licensed satellites identified in [its authorization].”¹⁰ PanAmSat further explained that “[u]ntil PanAmSat’s modification request is acted upon and, if granted, until a final ISL spectrum assignment is made, PanAmSat cannot finalize the design of its system and, therefore, it cannot proceed to construct and launch its Ka-band satellites.”¹¹

III. DISCUSSION

8. It is long-standing Commission policy to impose mandatory construction commencement milestones upon licensees in the fixed-satellite service.¹² The milestone schedule included in each authorization is designed to ensure that licensed entities are proceeding with construction and will launch their satellites into the limited orbit spectrum resource in a timely manner. Requiring licensees to adhere strictly to a milestone schedule prevents orbital locations from being warehoused by licensees to the exclusion of qualified entities that are prepared to implement systems immediately.¹³ Moreover, the Commission has consistently required licensees to execute non-contingent satellite construction contracts in order to meet their construction commencement milestones.¹⁴ Because it is manifestly in the public interest to ensure that licensees proceed expeditiously in completing construction of their systems and commencing service, the Commission has strictly enforced its milestone schedules.¹⁵

⁹ Letter, dated December 9, 1999, from Thomas S. Tycz, Chief, Satellite and Radiocommunication Division, FCC, to Joseph A. Godles, Esq., Counsel for PanAmSat, citing *Norris Satellite Communications, Inc.*, 12 FCC Rcd 22299, 22303-04 (1997).

¹⁰ Letter, dated December 20, 1999, from Joseph A. Godles, Esq., Counsel for PanAmSat, to Magalie R. Salas, Secretary, FCC.

¹¹ *Id.* at 2.

¹² *See, e.g., Norris Satellite Communications, Inc.*, 12 FCC Rcd 22299 (1997).

¹³ *MCI Communications Corporation*, 2 FCC Rcd 233 (CCB 1987).

¹⁴ *Norris Satellite Communications, Inc.*, 12 FCC Rcd at 22303.

¹⁵ *See, e.g., National Exchange Satellite, Inc.*, 8 FCC Rcd 636 (1993); *Advanced Communications Corporation*, 10 FCC Rcd 13337 (Int’l Bur. 1995).

9. By its terms, PanAmSat's authorization required PanAmSat to commence construction of its satellite system no later than May 1998. To meet this milestone, PanAmSat was required to have entered into a non-contingent construction contract executed on or before May 9, 1998. PanAmSat concedes that it did not do so on the basis of its pending modification and extension applications.

10. PanAmSat's reliance on its pending license modification and extension applications as a basis for failing to satisfy the first of its milestones is without merit. It is well established that an extension of a milestone schedule is granted only when delay in implementation is due to circumstances beyond the licensee's control.¹⁶ The filing of a license modification application does not justify an extension of a milestone schedule because the decision to seek a modification of one's license is a business decision wholly within the discretion and control of the licensee.¹⁷ Otherwise, a licensee could routinely extend its milestone deadlines by filing repeated modification requests for its system. Moreover, the "regulatory uncertainties" referenced by PanAmSat relate to the modifications that PanAmSat voluntarily proposed to its system, not to the system authorized in its license. In other words, PanAmSat could have satisfied the initial milestone by entering into a non-contingent construction contract by May 9, 1998, if it so desired; it chose, at its peril, not to do so.

11. PanAmSat's authorization expressly provided that, unless extended upon a showing of good cause, the license would become null and void in the event PanAmSat failed to satisfy any one of the milestones. PanAmSat voluntarily refrained from entering into a timely non-contingent construction contract apparently in the misguided belief that the Commission would eventually act favorably on its extension request. Indeed, it filed its extension request just days before the expiration of its initial milestone. We find, however, based on the foregoing, no good cause for extending, suspending or otherwise waiving PanAmSat's milestone schedule in this instance.

IV. CONCLUSION AND ORDERING CLAUSES

12. Based on the foregoing, we find that PanAmSat failed to meet the May 1998 construction commencement deadline and there is no basis presented for relieving PanAmSat of its obligation to meet this milestone.

13. Accordingly, IT IS ORDERED that, pursuant to Section 0.261 of the Commission's rules, 47 C.F.R. § 0.261, the authorization held by PanAmSat Licensee Corp., File Nos. 198/199-SAT-P/LA-95 and 202-SAT-AMEND-95, IBSF Nos. SAT-LOA-19950929-00155/54 and SAT-AMD-19950929-00109, IS DECLARED NULL AND VOID.

14. IT IS FURTHER ORDERED that the above-captioned application for modification of license and extension of milestone schedule, filed by PanAmSat Licensee Corp. on May 21, 1998, File No. SAT-MOD-19980521-00070, IS DENIED.

15. IT IS FURTHER ORDERED that the Petition to Deny, filed on August 26, 1999, by

¹⁶ *MCI Communications Corp.*, 2 FCC Rcd 233 (Com. Car. Bur. 1987).

¹⁷ *Columbia Communications Corporation*, DA 00-113 (rel. Jan. 21, 2000) at ¶ 12; *Advanced Communications Corporation*, 10 FCC Rcd 10,337, 13,341 (Int'l Bur. 1995); *National Exchange Satellite*, 8 FCC Rcd 636 (1993); *AT&T and Ford AeroSpace Satellite Services*, 2 FCC Rcd 4431 (1987) (request for additional time to conform satellites acquired from Ford to AT&T's business plan denied).

Pacific Century Group, Inc. IS DISMISSED AS MOOT.

16. IT IS FURTHER ORDERED that orbital assignments granted in *PanAmSat Licensee Corp.*, 13 FCC Rcd 1405 (Int'l Bur. 1997), are available for reassignment.

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson
Chief, International Bureau